

The Honorable Benjamin H. Settle

1 **BUCKNELL STEHLIK SATO & STUBNER, LLP**  
2 2003 Western Avenue, Suite 400  
3 Seattle, Washington 98121  
4 (206) 587-0144 • fax (206) 587-0277  
5

6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

8 ERWIN SINGH BRAICH,

9 Plaintiff,

10 vs.

11 STEVE MITTELSTAEDT, et al,

12 Defendant.  
13  
14

) No. CV7 0177C  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**REPLY IN SUPPORT OF McLEAN  
DEFENDANTS RENEWED  
MOTION TO DISMISS**

15 COME NOW, defendants Brian McLean and McLean & Armstrong LLP (hereafter  
16 collectively, "McLean") and hereby reply in support of their renewed motion to dismiss (hereafter  
17 "Motion"). Plaintiff's response purports to incorporate all "previously filed materials in this case  
18 when ruling on [McLean's] motions to dismiss." Such a response is not only unhelpful to the court,  
19 but essentially impossible to reply to. The response is no response at all and therefore pursuant to  
20 CR 7(b)(2) the court should deem the lack of response as an admission that the Motion has merit.  
21

22 Furthermore, as to the merits of the Motion, the court has previously considered all of  
23 plaintiff's arguments in opposition to the basis for the Motion. The court considered the same issues  
24 in connection with the KPMG defendants' renewed motion to dismiss [Docket 93] which this court  
25

26  
27 Reply in Support of McLean Defendants  
28 Renewed Motion to Dismiss - 1

**BUCKNELL STEHLIK SATO & STUBNER, LLP**  
2003 Western Avenue, Suite 400  
Seattle, Washington 98121  
(206) 587-0144 • fax (206) 587-0277

1 granted by order dated January 22, 2008. The substantive issues presented and resolved by KPMG's  
 2 renewed motion to dismiss are virtually identical to the substantive issues raised by McLean's  
 3 renewed motion for dismissal. The one additional question, is whether the protections of § 215 of  
 4 the Canadian Bankruptcy and Insolvency Act may apply to a Canadian bankruptcy trustee's counsel  
 5 (in this case McLean). This question was resolved by the Canadian bankruptcy court in McLean's  
 6 favor. Having determined that deference should be paid to the Canadian court's determination on the  
 7 extraterritorial application of § 215, there is no open question yet to resolve that would prevent  
 8 dismissal of the complaint against the McLean defendants.  
 9

10 In that the plaintiff makes no specific arguments in response to the Motion, McLean will not  
 11 burden the court with reiteration of its initial argument. McLean refers the court to the arguments  
 12 raised in its Motion and the arguments and material submitted by the KPMG defendants in their  
 13 reply in support of their renewed motion to dismiss.  
 14

15 The McLean defendants respectfully submit that by virtue of the analysis and conclusions  
 16 leading to the January 22, 2008 order dismissing the KPMG defendants the court should similarly  
 17 dismiss the McLean defendants. The basis for the KPMG defendant's motion is the same as the  
 18 basis for the McLean defendant's motion and the same result should obtain in both instances.  
 19

20 RESPECTFULLY submitted this 7th day of March, 2008.

21 BUCKNELL STEHLIK SATO & STUBNER, LLP

22  
 23 /s/ Jerry N. Stehlik  
 24 Jerry N. Stehlik, WSBA #13050  
 25 of Attorneys for McLean Defendants  
 26

27 Reply in Support of McLean Defendants  
 28 Renewed Motion to Dismiss - 2

BUCKNELL STEHLIK SATO & STUBNER, LLP  
 2003 Western Avenue, Suite 400  
 Seattle, Washington 98121  
 (206) 587-0144 • fax (206) 587-0277